

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

THOMPSON THRIFT DEVELOPMENT, INC.,)	
and WATERMARK AT PEORIA AZ, LLC,)	
)	
Plaintiffs)	
)	
v.)	CASE NO.: 2:23-cv-140
)	
THE CINCINNATI INSURANCE COMPANY,)	
and STATE AUTO PROPERTY AND)	
CASUALTY INSURANCE COMPANY,)	
)	
Defendants.)	

NOTICE OF REMOVAL OF CIVIL ACTION

Defendants, the Cincinnati Insurance Company (“CIC”) and State Auto Property and Casualty Insurance Company (“State Auto”) (collectively “Defendants”), by counsel, respectfully submit this Notice of Removal of the above-titled action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support of this Notice of Removal, Defendants state as follows:

1. On January 5, 2023, Plaintiffs, Thompson Thrift Development, Inc., (“Thompson Thrift”) and Watermark at Peoria AZ, LLC (“Watermark”) (collectively “Plaintiffs”), filed their Complaint in the Commercial Court docket of Vigo County Superior Court 3 under Cause Number 84D03-2301-PL-000063.

2. Pursuant to Local Rule 81-2(d), a copy of Plaintiffs’ Complaint is attached as **Exhibit A**.

3. Plaintiffs allege that Watermark is the owner of, and Thompson Thrift is the real estate manager of, approximately 10 acres located at 24701 North Lake Pleasant Parkway, Peoria, Arizona 85383 (the “Site”). Plaintiffs allege that the Site includes the Grandstone at Sunrise

residential development (“Grandstone”), an apartment and townhome complex with 70 buildings and 140 units. (Ex. A, ¶¶ 21-22).

4. Plaintiffs claim that the Site has suffered environmental contamination from perchloroethylene (“PCE”) released by an adjacent drycleaning business. (Ex. A, ¶¶ 23-32).

5. Plaintiffs seek a declaratory judgment that, pursuant to insurance policies issued by Defendants to Plaintiffs, Defendants have a duty to defend Plaintiffs and indemnify Plaintiffs for damages arising out of the environmental contamination of the Site. (Ex. A, ¶¶ 39-52).

6. Plaintiffs also allege claims for breach of contract against Defendants seeking unspecified money damages. (Ex. A, ¶¶ 53-56).

7. Defendants were served copies of Plaintiffs’ Complaint and Summons by certified mail on January 9, 2023. Pursuant to the Superior Court’s February 14, 2023 Order Granting Unopposed Motion for Enlargement of Time to Answer, the Defendants have until April 3, 2023 to file answers or motions in response to the Complaint.

8. The case stated by Plaintiffs in the Complaint was not removable because the citizenship of Watermark could not be determined based solely on the averments of the Complaint.

9. Pursuant to the directions of the U.S. District Court for the Southern District of Indiana, State Auto served Interrogatories upon Watermark on February 9, 2023 requesting information necessary for determining Watermark’s citizenship. *See Circle Ctr. Mall, LLC v. Zurich Amer. Ins. Co.*, 2014 WL 4539983, *6 (S.D. Ind. Sept. 11, 2014) (Engaging in citizenship-related discovery does not waive Defendants’ right to removal).

10. On March 14, 2023, Watermark served its Answers to State Auto’s Interrogatories providing information sufficient for determining Watermark’s citizenship. Accordingly, Defendants’ 30-day period for filing this Notice of Removal, post-receipt of other paper from

which it may first be ascertained that the case is one which is or has become removable, has not yet expired. 28 U.S.C. § 1446(b)(3).

11. Plaintiff Thompson Thrift is an Indiana corporation with its principal place of business located at 901 Wabash Avenue, Suite 300, Terre Haute, Indiana 47807. Accordingly, Thompson Thrift is a citizen of Indiana.

12. Plaintiff Watermark is a Delaware limited liability company with its principal place of business located at 901 Wabash Avenue, Suite 300, Terre Haute, Indiana 47807. Watermark's member are: (1) TTMU Watermark Partners, LLC ("TTMU"), an Indiana limited liability company with its principal place of business located at 901 Wabash Avenue, Suite 300, Terre Haute, Indiana 47807; (2) Thompson Thrift Holdings 2020, LLC ("TTH"), an Indiana limited liability company with its principal place of business located at 901 Wabash Avenue, Suite 300, Terre Haute, Indiana 47807; and (3) McEssy Investment Co. ("McEssy"), a Delaware and Illinois corporation with its principal place of business located in Illinois.

13. McEssy is a citizen of Delaware and Illinois.

14. The members of TTMU are TTH and Thompson Thrift Residential Partners 2021, LLC ("TTRP"), a Delaware limited liability company.

15. The members of TTH are: (1) John G. Thompson Revocable Trust Dated 12/02/2003 ("Thompson Trust"), an Illinois trust; and (2) Paul M. Thrift Revocable Trust Dated 05/16/2003 ("Thrift Trust"), an Illinois Trust.

16. The members of TTRP are TTH and the following individuals: (1) Jessica Tuttle, a citizen of Indiana; (2) Chris Alexander, a citizen of Indiana; (3) Greg Buckhout, a citizen of Indiana; (4) David Englert, a citizen of Indiana; (5) Tim Fears, a citizen of Indiana; (6) Brian Fritts, a citizen of Indiana; (7) Jesse Houghtalen, a citizen of Indiana; (8) Jose Kreutz, a citizen of Indiana;

(9) Carrie LaFay, a citizen of Indiana; (10) Mike Margason, a citizen of Indiana; (11) Eric Nelson, a citizen of Indiana; (12) Aimee O'Connor, a citizen of Indiana; (13) Tyler Sauerteig, a citizen of Indiana; (14) Steve Shaver, a citizen of Indiana; (15) Eric Wojak, a citizen of Indiana; (16) Joshua Purvis, a citizen of Indiana; (17) Brian Southworth, a citizen of Indiana; (18) Ken Howell, a citizen of Colorado; and (19) Mart Plocica, a citizen of Indiana and South Carolina.

17. The trustee of the Thompson Trust is John G. Thompson, a citizen of Indiana. Accordingly, as a traditional trust, the Thompson Trust is a citizen of Indiana. *See 4900 Morse Land Trust v. Occidental Petroleum Corp.*, 2023 WL 1990076 *2 (N.D. Ind. Feb. 14, 2023) (citing *Americold Realty Trust v. ConAgra Foods, Inc.*, 577 U.S. 378, 383 (2016)).

18. The trustee of the Thrift Trust is Paul M. Thrift, a citizen of Indiana. Accordingly, as a traditional trust, the Thrift Trust is a citizen of Indiana. *See Id.*

19. Accordingly, Plaintiff Watermark is a citizen of Indiana, Delaware, Illinois, Colorado, and South Carolina.

20. Defendant CIC is an Ohio corporation with its principal place of business located at 6200 Gilmore Road, Fairfield, Ohio 45014. Accordingly, CIC is a citizen of Ohio.

21. Defendant State Auto is an Iowa corporation with its principal place of business located at 4601 Westown Parkway, Suite 300, West Des Moines, Iowa 50266. Accordingly, State Auto is a citizen of Iowa.

22. Complete diversity of citizenship exists between Plaintiffs and Defendants.

23. When the Complaint does not establish the amount in controversy, a defendant's "good-faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence." *Oshana v. Coca-Cola, Co.* 472 F.3d 506, 511 (7th Cir. 2006). Therefore, pursuant to 28 U.S.C. § 1446(c)(2)(A) and Local Rule 81-1(a)(1), this Notice of Removal states

that the monetary value of the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. This good-faith estimate is based upon the following:

- a. Plaintiffs claim that they have incurred, and will continue to incur, substantial costs, expenses, losses, and damages related to claims arising from the alleged environmental contamination, including an inability to rent at least one of Grandstone's units since September 2022 (Ex. A, ¶¶ 28-32, 55);
- b. Plaintiffs seek an order compelling Defendants to both defend and indemnify Plaintiffs up to their respective policy limits. The CIC and State Auto policies contain primary "per occurrence" limits of \$1,000,000. The excess liability policies contain limits of up to \$10,000,000. (Ex. A, ¶¶ 39-52, pp. 11, 168, 318, 585, 752, 1118, 1295, 1360, 1380-81, 1539, 1560-61);
- c. Costs of defending the underlying action(s) may be included in the amount in controversy in a declaratory judgment action for coverage between insurer and insured. *American Standard Ins. Co. of Wisconsin v. Rogers*, 123 F. Supp. 2d 461, 463-64 (S.D. Ind. 2000);
- d. Plaintiffs seek compensatory, consequential, and other money damages for Defendants' alleged breach of contract, including recovery of attorney's fees and expenses incurred in bringing this action (Ex. A, ¶¶ 53-56, p. 11);
- e. Although Defendants do not concede that Plaintiffs have a right to recover them, attorney's fees may be included in the amount in controversy if the plaintiff has a right to the "based on contract, statute, or other legal authority." *Webb v. Financial Industry Regulatory Authority*, 889 F.3d 853,

857 (7th Cir. 2018) (quoting *Ross v. Inter-Ocean Ins. Co.*, 693 F.2d 659, 661 (7th Cir. 1982)); and,

- f. On January 19, 2023, Plaintiffs' counsel advised counsel for CIC by phone that she believes the amount in controversy in this matter exceeds \$75,000.00.

24. This Court has original diversity jurisdiction of the above-entitled action pursuant to 28 U.S.C. § 1332(a), and the action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(a).

25. Pursuant to U.S.C. § 1446(a) and Local Rule 81-2(a), a complete, true, and accurate copy as of the date of removal of the entire State Court Record under Cause Number 84D03-2301-PL-000063 in the Commercial Court docket of Vigo County Superior Court 3 is attached as **Exhibit B**.

26. No motions are pending in the state court action at the time of removal.

27. A copy of the Civil Cover Sheet is attached as **Exhibit C**.

WHEREFORE, Defendants, the Cincinnati Insurance Company and State Auto Property and Casualty Insurance Company, by counsel, respectfully request that this action be removed from the Commercial Court docket of Vigo County Superior Court 3 under Cause Number 84D03-2301-PL-000063 to the United States District Court for the Southern District of Indiana, Terre Haute Division, for trial and determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served with the Clerk of the Court on March 23, 2023 using the CM/ECF system which sent notification of this filing or by placing it in the U.S. Mail, postage pre-paid, to the following:

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